93-746

FILED
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OFFICE OF THE CLERK

NUMBER 93-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Does the Constitution prohibit state courts from declaring a congregation of a hierarchical church an independent church and transferring real property from the denomination to its former congregation when the denomination's and congregation's corporate documents prohibit secession, but the congregation purports to secede because of dissatisfaction with the way the head of the church is running it?

B. Do state courts infringe the First Amendment rights of a party to litigation when they apply court rules to sanction the party's counsel for submitting pleadings petitioning for redress of the party's grievances?

PARTIES TO THE PROCEEDING

Plaintiffs/Appellees:

Mother African Union First Colored Methodist Protestant Church, a Delaware religious corporation.

Morris A. Comegys and Sara B. Gardner, individually and as representatives of a class of 229 members of the Mother AUFCMP Church.

Defendants/Appellants:

Delbert L. Jackson.

The Conference of African Union First Colored Methodist Protestant Church, a Delaware non-stock corporation.

There is no parent company or partly owned subsidiary to be listed.

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DECISIONS BELOW

The appellate court issued no opinion but relied on three of the trial court's opinions. Those trial court memorandum opinions entered 15 May 1991 [A082], 22 April 1992 [A032], and 20 May 1992 [A011] were not officially reported, but the first two of them were unofficially reported at [1991] Del.Corp.Lit.Rep. 8741 (Del.Ch. 1991) and [1992] Del.Corp.Lit.Rep. 10536 (Del.Ch. 1992).

GROUNDS FOR JURISDICTION

The decision below was rendered by the Delaware Supreme Court on 14 October 1993. No rehearing was sought. This Honorable Court has jurisdiction in this cause pursuant to 28 U.S.C. §1257(a) & §2101(c).

PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS:

Amendment I:

> Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.

Amendment IV:

The right of the people to be secure . . . against unreasonable . . . seizures, shall not be violated . . .

Amendment V:

No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DELAWARE SUPREME COURT RULES:

Del.Sup.Ct.R. 34:

The Court may strike any brief, appendix, motion or other paper or document which does not conform to these Rules or which is not within the bounds of professional propriety.

Del.Sup.Ct.R. 102(b):

Conduct of Attorneys and Litigants. Attorneys and litigants shall conduct themselves before the Court in a

manner consistent with the letter and spirit of these Rules. Attorneys are expected to take all necessary steps to avoid unreasonable delays and are expected to present all matters and papers to the Court with the highest professional competence and integrity.

DELAWARE CHANCERY COURT RULE 11:

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other papers is signed in violation of the Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

STATEMENT OF THE CASE

The Conference of African Union First Colored Methodist Protestant Church, the oldest independent black denomination in the country, is a hierarchical church founded in 1813; it is also a Delaware corporation. Bishop Delbert L. Jackson has headed the Church since 1988. The Mother African Union First Colored Methodist Protestant Church is a local congregation in the Conference; it is a Delaware religious corporation. Morris Comegys and Sara Gardner were members of the Mother Church congregation.

On 18 April 1991 Comegys and Gardner sued Jackson in Delaware's Chancery Court, on behalf of the members of the Mother Church congregation, for a declaration that that congregation had validly seceded from the Conference and to void a 6 April 1991

quitclaim that had transferred title of the Mother Church building, cemetery, and parsonage from the Mother Church to the Conference [A083]. The reason for the secession was the congregation's dissatisfaction with Jackson's management style [A090]; an exhibit to the complaint was the Mother Church's employment contract with the pastor Jackson had appointed, in which the trustees of the Mother Church promised to abide by the Book of Discipline [A102-03], the corporate bylaws of both the Conference and the Mother Church.

The day after the complaint was filed, Vice Chancellor Jack B. Jacobs granted the plaintiffs a temporary restraining order to use the Mother Church building [A084], and then he joined the Mother Church as a plaintiff and the Conference as a defendant. At every hearing and in every brief defendants asserted that this was an in-

ternal dispute over administration of a hierarchical church, so the First Amendment required civil courts to defer to the decision of the highest ecclesiastical authority, and that secular language in the corporate parties' charters and bylaws required property to remain with the Conference when a congregation's members seceded, and that Delaware's neutral rule favors denominations over member congregations [A095-96].

In his opinion granting plaintiffs a preliminary injunction the vice chancellor ruled that the Church might be hierarchical as to spiritual affairs but was not hierarchical as to temporal affairs [A096]; recognizing that he was dealing with a schism [A051] (or "power struggle" [A068, n. 12]) within the Church, he ruled that he could nevertheless decide the case as long as he addressed "only the legal questions" [A092]. At every stage after the TRO hear-

ing he placed on defendants the burden of disproving the conclusions he had drawn then [A098-99], and he ruled after trial that they had not met that burden [A034; A041, n. 3; A053].

During the Chancery Court proceedings the vice chancellor repeatedly sealed or struck parts of the record and ordered defendants' counsel not to distribute pleadings filed in other courts [A062-63; n. 11, A064]; if he had thought of it, he would have enjoined everyone from suing the plaintiffs in other courts [A076]. In April 1992 he ordered counsel to schedule a funeral at the Mother Church, and she moved to withdraw, asserting an ethical conflict between the interests of the Conference and Bishop (whom she represented in the litigation) and the pastor of the Mother Church (whom she had represented since before the litigation began but who was not

a party to the litigation and who was the Mother Church's employee under its bylaws and employment contracts) [A019-20].

The vice chancellor wanted to hold counsel in contempt but was unable to find authority to support such a finding [A021-22], and then she complained to Delaware's Court on the Judiciary that his conduct throughout the case had been aberrational. A week later he sanctioned her, ruling that her application to withdraw had been filed to harass her opponents [A030]. The Court on the Judiciary then summarily dismissed her complaint [In re: Hon. Jack B. Jacobs, No. 9, 1992 (29 May 1992)].

The Chancery Court entered its final judgment order on 24 February 1993, and defendants timely noticed their appeal to Delaware's Supreme Court. In their opening appellate brief defendants raised the federal question, saying at ¶9 of the "Summary

of Argument":

> The trial court contravened the First Amendment by awarding the church's property to dissident former members when explicit secular language in the corporate documents provided otherwise.

In their reply brief defendants argued, inter alia, the trial court had erred by denying other states' courts' judgments full faith and credit and by applying the court's rules, the ethics rules, and the rules of evidence to deny defendants a fair hearing. The appellate court struck that brief from the record [A003]. Defendants filed another reply brief [A101] again asserting that the First Amendment required civil courts to defer to the decisions of the highest ecclesiastical authority in this hierarchical Church [A107-10]. The court affirmed, by order dated 14 October 1993 [A001], without issuing any opinion.

REASONS FOR ALLOWING WRIT

Certiorari should be granted in this case for the following reasons:

1) This decision is in conflict with the decision of the United States court of appeals for the District of Columbia on the same matter.

2) This decision is in conflict with applicable decisions of this Court.

The Religious Rights

The Conference was incorporated in 1813 as the "Union Church of Africans"; since its 1866 merger with part of the First Colored Methodist Protestant Church it has usually been known as the "African Union Methodist Protestant Church." Its history is well documented, especially in two treatises by Professor Lewis Baldwin of Vanderbilt University, whom both sides in this case recognize as the foremost

authority on the history of this Church: L. Baldwin, "Invisible" Strands in African Methodism: A History of the African Union Methodist Protestant and Union American Methodist Episcopal Churches, 1805-1980 (ATLA Monograph No. 19, 1983); L. Baldwin, The Mark of a Man: Peter Spencer and the African Union Methodist Tradition (1987).

In 1851, when the denomination was called the "African Union Church" and the Mother Church congregation was called the "Union Church at Wilmington," the members of the Mother Church refused to let their presiding elder Ellis Sanders preach to them, so he sued the Church in Delaware's Superior Court and was granted a writ of mandamus. On appeal, Delaware's then-highest court reversed, opining that the separation-of-church-and-state clause in Delaware's constitution [A101-02] deprived civil courts of jurisdiction over internal

disputes as to ecclesiastical "functions and discipline." Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100, 126 (Del. 1855).

In that opinion the Court of Errors and Appeals also recited the history of the Church's first four decades, while those facts were within living memory, including the publication of the first Discipline or bylaws [at 103], the growth of the denomination into four states besides Delaware [at 104], and the establishment of the Yearly (later, "Annual") Conference as the governing body [at 104].

In 1954 the members of the AUMP congregation in Washington, D.C., disgruntled because the presiding prelate was transferring their pastor to another church, voted to secede from the Church; St. Paul's was a D.C. corporation that held legal title to the congregation's real property. The

Conference sued them and won title to the real estate in the trial court, and that decision was affirmed on appeal. Cleaver v. Conference of AUFCMP Church, 240 F.2d 57 (D.C.Cir. 1956).

In 1989 the members of the AUMP congregation in Lancaster, Pennsylvania, disgruntled because the presiding prelate was transferring their pastor to another church, voted to secede from the Church; St. Paul's was a Pennsylvania corporation that held legal title to the congregation's real property. The Conference sued them and won title to the real estate in the trial court; that decision is still on appeal. In Conference of AUFCMP Church v. Shell, 627 A.2d 188 (Pa.Super. 1993), the Superior Court transferred the appeal to the Commonwealth Court, where oral argument is scheduled for 16 December 1993.

Encouraged by the Mother Church's suc-

cess in Chancery Court, since autumn 1991 other AUMP congregations have sued the Conference in their state courts for declarations of independence and title to their real estate: two Pennsylvania congregations filed separate suits; five Delaware congregations filed two suits in Chancery Court, one Maryland congregation filed suit, and one New Jersey congregation filed suit in state court, and the Conference removed it to federal court. None of those cases has yet reached trial, and the two in Delaware were stayed pending the Delaware Supreme Court's decision in this case.

Even if the Delaware decision were not contrary to every church-property decision this Court has ever made, stopping this frenzy of litigation by resolving the conflict between the D.C. and Delaware decisions would be sufficient reason to grant certiorari.

The Expression Rights

There is a second aspect to this case that also merits consideration, however, and that is petitioners' free-speech and petition rights. Every defendant has the right to due process before his property is transferred to the plaintiff, and every citizen has the right to petition the appellate court to remedy denials of due process in the trial court, but few persons can exercise those rights pro se. When state courts impose professional sanctions against an attorney for asserting her client's fundamental rights, they abridge those rights, not only for that client, but for every party who will not be able to hire an attorney to assert his rights because of the chilling effect.

Vice Chancellor Jacobs says it is unethical for a lawyer to put her client's interests ahead of her duty to be an ob-

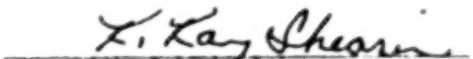
jective officer of the court [n. 11, A065-66]. Arthur Kinoy says, "Without lawyers, able and willing to fight for constitutional rights, the rights themselves were meaningless words written on a piece of paper." A. Kinoy, Rights on Trial 240 (1983).

Clients' free-speech cases often involve defamation or pornography, where the Court must balance conflicting societal interests; lawyers' free-speech cases often involve commercial speech, where the Court must balance the conflicting financial interests of the lawyer and client. This case does not involve any of those conflicting interests--it presents the plain vanilla question of whether an attorney is her client's mouthpiece or the court's shill, appearing to speak for her client when she is in fact muzzled by the court's rules.

Petitioners urge the Court to grant

this writ and thereafter to reverse the ruling below.

Respectfully submitted,



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THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

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v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

APPENDIX TO PETITION

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IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs Below,
Appellees.

No. 96, 1993

Submitted: 24 August 1993
Decided: 14 October 1993

Before VEASEY, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 14th day of October, 1993, the Court having considered this matter on briefs and having concluded that the same should be affirmed on the basis of and for the reasons assigned by the Court of Chancery in its Memorandum Opinions dated May 15, 1991, April 22, 1992, and May 20, 1992.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is,

AFFIRMED.

BY THE COURT:

/s/ A. G. T. Moore II
Justice

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs Below,
Appellees.

No. 96, 1993

Submitted: 24 August 1993
Decided: 13 September 1993

Before VEASEY, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 13th day of September, 1993, it appearing that:

1) The appellants' amended reply brief purports to contain legal argument constituting an ad hominem attack on the trial judge, is disrespectful and contains immaterial, impertinent and scandalous matter.

2) Accordingly, the amended reply brief is a nonconforming paper under Rules 34 and 102(b), and will be stricken.

NOW, THEREFORE, IT IS ORDERED pursuant to Rules 34 and 102(b) that the amended reply brief be, and the same hereby is, STRICKEN with leave granted to appellants to file a second amended reply brief in full compliance with the Rules of this Court on or before Monday, September 20, 1993 at 4:30 p.m. IT IS FURTHER ORDERED that the Clerk shall forward a copy of appellants' amended reply brief, which has been stricken, to Disciplinary Counsel with a copy of this order for such further proceedings as may be appropriate.

BY THE COURT:

/s/ A. G. T. Moore II
Justice

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT CHURCH,
a Delaware corporation, et al.,
Defendants.

C. A. No. 12055
Class Action

Entered: 24 February 1993

SUPERSEDING FINAL ORDER AND JUDGMENT

The Court having issued its Amended Final Order and Judgment on May 20, 1992, and the Supreme Court having determined that that Order was interlocutory, and it appearing that only two matters await judicial action, and that it is appropriate that such judicial action is now timely and that an Order that determines finally all issues in this case;

NOW, THEREFORE, IT IS ORDERED, AD-

JUDGED, DECREED AND DECLARED this 24th day of February, 1993, as follows:

1. For the reasons set forth in this Court's Opinion dated April 22, 1992:

(a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them, including, but not limited to, Rev. Thomas E. Moon and Rev. Jonah I. Lindsay, are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") located at West Ninth and Franklin Streets, Wilmington, Delaware, 125 West 33th Street, Wilmington, Delaware, and Mount Olive cemetery found on Lancaster Avenue in New Castle County, Delaware. Said quiet operation, use, enjoyment and gover-

nance resides solely in the Mother Church, its duly elected trustees, its members, and their successors.

(b) The nine duly elected incumbent trustees of the Mother Church are declared to be Morris A. Comegys, Sara B. Gardner, Mary K. Walker, Jane J. Gibbs, John J. Jackson, Lydia C. Watson, Anna B. Cassidy, Lydia Clayton, and Patricia Wallace.

(c) The members of the Mother Church as of April 9, 1991, are the 229 persons listed in Plaintiffs' Trial Exhibit 20.

(d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds, encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.

(e) The defendants, and all others

identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above identified properties and any other property of the Mother Church, and (ii) interfering with worship services, funerals or any other religious practices conducted by that corporation.

(f) The Indenture, dated April 6, 1993, between the Mother Church and the Conference of African Union First Colored Methodist Protestant Church recorded with the Office for the Recording of Deeds in and for New Castle County, Delaware, in Book No. 1160, page 179, is hereby declared null and void ab initio. Plaintiffs shall record this Order with said office and cause this Order to be so indexed so that the records of the Recorder of Deeds will reflect the invalidity of that Indenture.

(g) The counterclaim filed by the defendants is dismissed with prejudice.

2. For the reasons set forth in this Court's Opinion and Order dated May 20, 1992, adjudicating K. Kay Shearin, Esquire in violation of Court of Chancery Rule 11:

(a) The relief ordered at page 10 of the Opinion is hereby incorporated into this Order by reference; and

(b) Ms. Shearin shall pay $459 in attorneys' fees to plaintiffs' counsel in consequence of the said Rule 11 violation.

3. The plaintiffs having applied in timely fashion for an award of attorneys' fees and costs, and based upon the plaintiffs' moving papers and the letters of counsel to the Court dated February 16, 1993 and February 23, 1993:

(a) The plaintiff class is awarded the sum of $6845 as counsel fees, and the sum of $3416.88 as costs.

(b) The aforesaid attorneys' fees and costs shall be paid by the defendant, the Conference of African Union First Colored Methodist Protestant Church.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 20 May 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

During the course of a contempt proceeding against defendants' counsel, K. Kay Shearin, Esquire, it came to the Court's attention that she may have violated Chancery Court Rule 11. Because of the seriousness of the matter involved, the Court, sua sponte, directed counsel to brief that issue, and the briefing is now completed. This is the Opinion of the Court on the issue of whether Ms. Shearin

has violated Rule 11.

I.

The relevant facts are uncontroverted. This action involved a dispute over which parties owned and had the right to control the disposition of properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") -- the plaintiffs, who represent the Mother Church's Trustees; or the defendants, who are the Conference of African Union First Colored Methodist Protestant Church (the "Conference") and its presiding prelate, Bishop Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, this Court temporarily restrained the defendants from "interfering with the quiet title, operations, use, enjoyment, and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington,

Delaware" during the days and times of the week specified in that Order. That April 19th temporary restraining Order also directed (in Paragraph (c)) that:

> The defendant [Bishop Jackson] and his agents, employees, officers, successors, assigns, and all other acting in concert with him shall permit access for the conduct of funerals and weddings as requested by the plaintiffs.

On May 15, 1991, this Court granted the plaintiffs' motion for a preliminary injunction, and continued in effect its April 19, 1991 temporary restraining Order (including the above-quoted provision) pendente lite. (See Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 15, 1991.)) Thus, from April 19, 1991 through the final determination of the merits (see Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992)), the defendants and their agents were under a Court-ordered duty to "permit access for the conduct of

funerals and weddings as requested by the plaintiffs." Until April of this year, that injunctive provision was implemented without difficulty.

When it first became necessary to schedule a funeral under that provision, plaintiff's counsel approached Ms. Shearin and asked her to contact the Reverend Thomas E. Moon ("Reverend Moon") to make the necessary funeral arrangements. Plaintiffs' counsel proceeded in that manner because Reverend Moon had been designated as Pastor of the Mother Church (over the plaintiffs' objection) by Bishop Jackson. That is, Reverend Moon was aligned with (and, thus, was believed to be a servant, employee, or agent of) defendant Bishop Jackson, for whom Ms. Shearin was counsel of record.

When plaintiff's counsel approached Ms. Shearin, she told them that she did not want to be involved, and that they should

contact Reverend Moon directly to arrange funerals. Ms. Shearin claimed that she did not represent Reverend Moon. Indeed, when plaintiffs' counsel sought to take the deposition of Reverend Moon (who is not a party to this action), Ms. Shearin informed them that she was not Reverend Moon's attorney, that she would not be representing him, and that plaintiffs' counsel would have to subpoena Reverend Moon to obtain his testimony. (4/27/92 Contempt Hrg. Tr. at 7-9.) Accordingly, between April 19, 1991, and the trial which took place in September, 1991, plaintiffs' counsel contacted Reverend Moon directly to arrange for weddings and funerals.

Based on their understanding that Ms. Shearin did not represent Reverend Moon, Mr. Neuberger, one of plaintiffs' attorneys, also communicated directly with Reverend Moon during the trial. Specifical-

ly, on September 17, 1991, Mr. Neuberger informed Reverend Moon that he (Reverend Moon) would not be called upon to testify at the trial, and was therefore free to leave the courthouse.

On September 18, 1991, Ms. Shearin wrote a letter to the Court, irately contending -- for the first time -- that she represented Reverend Moon, and that Mr. Neuberger's direct communication with Reverend Moon was therefore ethically inappropriate.[1] Ms. Shearin also wrote a letter to Disciplinary Counsel complaining of Mr. Neuberger's conduct. (4/27/92 Contempt Hrg.

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[1]Ms. Shearin wrote "Mr. Neuberger's conduct was outrageous. He knows that I represent Pastor Moon, yet he presumed to give him gratuitous legal advice. . . and prevented him from entering the courtroom to consult me. . . ." (9/18/91 Letter to Court of Ms. Shearin; emphasis added.)

Tr. at 11.) That letter prompted a formal inquiry of plaintiffs' counsel, which, however, led to no further action by Disciplinary Counsel. Given Ms. Shearin's position that she represented Reverend Moon, plaintiffs' counsel quite understandably decided that any future communications with Reverend Moon would be through Ms. Shearin.

During late March of this year, it became necessary once again to schedule a funeral. Accordingly, plaintiffs' counsel asked Ms. Shearin to contact Reverend Moon and ask him to make the appropriate funeral arrangements. However, Ms. Shearin refused, on the basis that it was not her "role" to schedule funerals and that she would not assist in that effort -- i.e., would not assist her client in complying with the Court's Order -- unless the Court directed her to do so. Accordingly, on April 1, 1992, Ms. Moore, plaintiffs' other

attorney, wrote the Court a letter recounting those facts and requesting it to intervene. Because the matter concerned compliance with the Court's preliminary injunction Order, I scheduled a telephone conference with counsel on April 2, 1992.

During that conference the Court instructed Ms. Shearin in her capacity as an officer of the Court to contact her client, Reverend Moon, to convey the plaintiffs' request to schedule the funeral. Ms. Shearin refused to obey the Court's direction, even after the Court repeated it. The Court then advised counsel that it would entertain a motion to hold Ms. Shearin in contempt. The Court also advised plaintiffs' counsel that they could contact Reverend Moon directly after first informing Disciplinary Counsel of their intended course of action and the reason why direct contact with Reverend Moon was

required.

The next day, April 3, 1992, plaintiffs' counsel reported to the Court that she had contacted Disciplinary Counsel and Reverend Moon, and that Reverend Moon had duly scheduled the funeral. That same day the plaintiffs also moved to hold Ms. Shearin in contempt of court, and the court subsequently entered an Order scheduling a contempt hearing for April 27, 1992.

In response to the contempt motion, Ms. Shearin filed a document styled "Application to Withdraw Appearance" on April 6, 1992. In that document Ms. Shearin set forth several reasons why her refusal to obey the Court's verbal order to contact Reverend Moon was not a contempt of court. One of those reasons was that that verbal order was not of record.[2] Another was that

[2]The April 2, 1992 telephone conference was not transcribed by a court reporter. In

> . . . Pastor Moon is the Mother Church's agent, not the Conference's, and therefore the Court was ordering me to carry messages from my client's adversary to their own agent, a direct conflict of interest under Lawyers' Rule 1.7.

(Application to Withdraw Appearance, ¶2(b).)

In other words, Reverend Moon had now become plaintiffs' counsels' client, not

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hindsight, it should have been. Nor was the Court's verbal order to Ms. Shearin later reduced to writing, because at that time the Court did not fully appreciate that Ms. Shearin would contend that a court order directed to one of its attorney-officers is unenforceable if it is not of record, and because by the time the Court learned that Ms. Shearin would be taking that position, the problem giving rise to the dispute had been resolved. Thus, any recorded order would at that point have been moot.

Ms. Shearin's.

At the contempt hearing Ms. Shearin rested her defense entirely upon her contention that the Court's April 2, 1992 verbal order to her was not of record. After taking the matter under advisement, the Court, by letter dated April 30, 1992, advised counsel that, for reasons unrelated to the merits, it would decline to adjudicate Ms. Shearin in contempt of court. To be sure, Ms. Shearin's conduct as an officer of the Court was inexcusable and would have been a contempt had the Court formally made its April 2, 1992 verbal order of record. However, the sparse case authority on the subject made it not altogether clear whether that verbal order could support a contempt finding. (See 4/30/92 Letter of Court to Counsel.) The Court concluded that instead of resolving that uncertainty in the contempt context,

it would be more productive to address frontally the conduct of counsel that had caused the underlying problem to begin with, i.e., Ms. Shearin's inconsistent litigating positions concerning her legal representation of Reverend Moon. Because those positions were both subjects of a "pleading, motion [or] other paper of a party . . . signed by [an] attorney of record," that conduct implicated, and could be addressed under the rubric of, Chancery Court Rule 11.

II.

The sole issue is whether Ms. Shearin's inconsistent positions concerning her representation of Reverend Moon (as set forth in her September 18, 1991 letter to the Court, and in her April 6, 1992 Application to Withdraw Appearance) formed the basis of a Rule 11 violation. I conclude that they did.

A principal purpose of Rule 11 is to create strong incentives for an attorney or a party not to sign and file a "pleading, motion, or other paper" without first having made reasonable inquiry and being satisfied that the pleading or other document is "well grounded in fact" and "warranted by existing law" or a good faith argument for a change in the law. Rule 11 also proscribes the filing of any document of a party signed by an attorney for "any improper purpose." These objectives are implemented by the following language which forms the core of the Rule:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase

> in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party . . . the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

I conclude, specifically, that the signing and filing of the Application to Withdraw Appearance violated Rule 11 for the following reasons:

1) Ms. Shearin's positions concerning Reverend Moon, in her September 18, 1991 letter to the Court and in her application to Withdraw Appearance, are clearly inconsistent. In the former document Ms. Shearin took the position that "I represent Pastor Moon." In the latter she stated that Pastor Moon was "the Mother Church's agent," i.e., the agent of "my client's ad-

versary." That statement necessarily meant that Ms. Shearin did not (because ethically she could not) represent Reverend Moon.[3] Since they cannot be reconciled, one of those mutually contradictory positions must be unfounded.

2) The record reveals no basis to conclude that Ms. Shearin's September 18, 1991 letter to the Court was without factual or legal basis. Although Reverend Moon was a-

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[3] If Ms. Shearin represented Reverend Moon as she stated in her September 18, 1991 letter to the Court, there would be no ethical prohibition against her contacting Reverend Moon to implement this Court's preliminary injunction Order. Therefore, for Ms. Shearin to claim that she could not ethically contact Reverend Moon to schedule the funeral, she necessarily must have been asserting that she did not represent Reverend Moon.

ligned with -- indeed was answerable to -- defendant Bishop Jackson, his role as Pastor included dealing with a congregation that was largely hostile to him. Accordingly, it is not implausible that Reverend Moon might have desired to retain Ms. Shearin to represent him either separately or as the defendants' agent. In any event, I am unable to conclude that Ms. Shearin's September 18, 1991 statement to the Court that she represented Reverend Moon was unfounded. I therefore will assume that that statement was true, notwithstanding the position Ms. Shearin previously took when plaintiffs' counsel sought to depose Reverend Moon.

3) However, the record does reveal that Ms. Shearin had no basis in fact or law to contend in her Application to Withdraw appearance that Reverend Moon was the plaintiffs' agent. To the contrary, the undis-

puted record shows that Reverend Moon had been thrust upon the plaintiffs as their Pastor, against their wishes, by defendant Bishop Jackson. Reverend Moon's deposition made it abundantly clear that he was in no sense an agent of the plaintiffs, and Ms. Shearin has shown no basis in fact for contending otherwise. One must infer that that statement was designed to avoid a contempt finding, by suggesting that because Ms. Shearin did not represent Reverend Moon, she could not validly be ordered to contact him.

4) Ms. Shearin has made no effort to reconcile these two conflicting positions in any intelligible way. Indeed, absent an intervening change in the lawyer-client relationship between Reverend Moon and Ms. Shearin, there is no way those opposite statements can be reconciled.[4]

[4]Ms. Shearin does not even argue that any

Accordingly, insofar as the Application to Withdraw Appearance represents that Reverend Moon was the plaintiffs' agent and that Ms. Shearin was ethically prohibited from contacting him, it was not "well grounded in fact" or "warranted by existing law" within the meaning of Rule 11. In fact, Ms. Shearin was Reverend Moon's attorney and therefore she could ethically have contacted him to schedule the funeral.

Although the Court wishes it could do

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such change ever occurred, i.e., that she ceased to represent Reverend Moon after September 18, 1991. On the contrary, in her letter to the Court in opposition to a Rule 11 adjudication she stated "I am the Pastor's lawyer. . . ." As previously noted (see n. 3, supra), since Ms. Shearin was Reverend Moon's lawyer, there is no reason why she could not have contacted him to schedule the funeral.

otherwise, it is unable to view this conduct as merely a product of a well-intended but mistaken error of judgment. There is no claim, let alone evidence, that Ms. Shearin made an innocent error of judgment. Rather, her conduct lamentably evidences a pattern of playing "fast and loose" with opposing counsel and, in this instance, with the Court as well. Ms. Shearin conveniently and alternatively has claimed to be -- and not to be -- Reverend Moon's counsel whenever it suited her immediate litigation purpose. Consistent with that approach, she also advised plaintiffs' counsel that she would not contact Reverend Moon unless the Court ordered her to do so, but when the Court did, she then refused to obey the Court's verbal order. That conduct created needless delay in implementing the Court's preliminary injunction provision regarding the sche-

duling of funerals, and it served only to harass the plaintiffs. Such behavior is capricious and unacceptable, and is wholly inconsistent with the high standards of conduct expected of officers of this Court.

For these reasons the Court further concludes (again, reluctantly) that the Application to Withdraw Appearance also violated Rule 11 because it was filed for an "improper purpose," namely, to harass and vex the opposing parties.

Given the nature of the Rule 11 violation, the Court imposes the following sanctions:

1) Ms. Shearin shall pay plaintiffs the reasonable attorneys' fees incurred by plaintiffs by reason of her Application to Withdraw Appearance; and

2) a copy of this Opinion shall be forwarded to Disciplinary Counsel of the Board of Professional Responsibility for such in-

vestigation and further proceedings as Disciplinary Counsel deems warranted. See Rules 3.3(a)(1) and 3.4(c) of the Delaware Lawyers' Rules of Professional Conduct.

IT IS SO ORDERED.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 22 April 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

This is an action for declaratory and injunctive relief, which the plaintiffs filed on April 18, 1991, to establish their ownership rights in certain church properties. The plaintiffs are Mother African Union First Colored Methodist Protestant Church (the "Mother Church"), a church incorporated in Delaware, and two of the Mother Church's Trustees, who sue individually and on behalf of a class of other

persons similarly situated. The defendants are The Conference of African Union First Colored Methodist Protestant Church, a Delaware corporation (the "Conference"), and its Bishop, Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of The [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware" during the days and times specified in that Order. One month later the Court granted the plaintiffs' motion for preliminary injunctive relief, and continued the temporary restraining order in effect until further order of the Court. See Mother Church v. The Conference, Del. Ch., C.A.No. 12055, Jacobs, V.C., Mem.Op. [A100] (May 15, 1991). On September 16

and 17, 1991, a two-day trial on the merits took place, after which the parties submitted post-trial briefs. This is the decision of the Court on the merits after trial.

I.

The facts underlying the present dispute are narrated in detail in the Court's May 15, 1991 preliminary injunction Opinion. See id. [A085-91]. To avoid needless repetition, that May 15, 1991 Opinion is made an Appendix to, and incorporated by reference in, this Opinion. Having considered the trial testimony and the submissions of counsel, I find nothing that warrants altering the factual findings of the May 15, 1991 Opinion in any respect. Accordingly, the facts as preliminarily found in that Opinion are finally found to be the facts upon which this Court's final judgment rests. The Court

thus finally determines that (i) the power to control the disposition of the Mother Church's physical properties is vested solely in the Mother Church's Trustees and its membership, subject to the Mother Church's Articles of Association and by-laws, (ii) that power has not been ceded to, or in any way superseded or supplanted by, the Conference or Bishop Jackson, and (iii) none of the properties of the Mother Church have been validly disposed of, or in any form conveyed to, the Conference.

Unfortunately, that determination does not dispose of all issues in this case. Left undecided in the Court's previous Opinion were "the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A099]. Those questions implicate the further question of whether the Conference has any power to

influence the "manner and disposition of the Mother Church's properties." Id. [A-099]. The defendants argue that even if the power to control the Mother Church's properties and other activities is found to reside in the Trustees, the defendants are still entitled to judgment because the plaintiffs (and the other Trustees) are no longer the Mother Church's lawful Trustees. Rather (the defendants argue), the lawful Trustees are the persons that Bishop Jackson and the Conference have selected to occupy those positions. Because the plaintiffs hotly dispute that claim, the Court addresses those issues in Part II, infra, of this Opinion.

The plaintiffs contend that they are also entitled (i) to have this action certified as a class action, (ii) to a determination that the defendants are in contempt of court, and (iii) to an order di-

recting the defendants to pay the plaintiffs' attorneys' fees and costs. The Court considers those matters in Part III, IV, and V, respectively, of this Opinion.

Finally, the defendants advance several counterclaims and procedural issues, and in that connection they contend that they are entitled to have this action certified as a defendant class action. The Court addresses those matters in Part VI of this Opinion.

II.

To determine who are the Mother Church's lawful Trustees and members, some legal background is helpful. In Jones v. Wolf, 443 U.S. 595 (1979), the United States Supreme Court gave state courts a choice between (at least) two methods of resolving church property disputes that do not require those court to adjudicate religious controversies. First, if the

church is "hierarchical" in nature, a state court may defer the resolution of the controversy to an authoritative tribunal established by the church. Alternatively, whether or not the church is hierarchical, a state court may resolve the property dispute on the basis of "neutral principles of law." Id. at 597, 602-10. Both approaches are consistent with the Religion Clauses of the First Amendment to the United States Constitution. Id.

In its preliminary injunction Opinion, this Court chose to follow the "neutral principles of law" approach.[1] In so doing

[1]That choice was ultimately vindicated by the evidence, as nothing in the trial record (other than the uncorroborated testimony of Bishop Jackson, which I find to be self-serving and not credible) supports the defendants' position that the religious denomination of which the Mother Church is

the Court considered the certificates of incorporation of the Mother Church and the Conference, deeds to the church properties, and the Historical Preface of the 1990 Book of Discipline.[2] See Mother

a part, is hierarchical. Thus, there is no "authoritative tribunal of the hierarchical church" to which this Court could defer the resolution of this dispute. Jones v. Wolf, supra. Moreover, the adjudication of this property dispute does not require the resolution of any controversy concerning religion.

[2]The full title of that document is The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World. Although that entire document was placed on record for the purposes of the preliminary injunction motion, it was not made a part of the trial record

Church v. The Conference, supra, [A084-90, A094-99]. On the basis of that record, the Court concluded (preliminarily) that there was no evidence that the Conference is legally entitled to supplant the power of the Mother Church's Trustees and

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(except for the Historical Preface). The defendants, nonetheless, cited portions of that document (other than its Historical Preface) at numerous points in their Answering Trial Brief. The Court does not view the absence of this document from the trial record as significant, because it considered the Book of Discipline in depth at the preliminary injunction state and found nothing therein which entitles the Conference to supplant the power of the Mother Church's Trustees and membership to control and dispose of that Church' physical properties. See Mother Church v. The Conference, supra, at [A090].

membership to control the disposition of that Church's physical properties. See id. [A089-90]. As earlier noted, the defendants have shown no reason for the Court to alter its conclusion.[3]

As also noted, however, certain questions were left open, including "the iden-

[3]The defendants were afforded the opportunity to present evidence at trial in support of their contentions that "(1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees." Mother Church v. The Conference, supra, [A095]. But, the defendants provided no evidence that persuades the Court to alter its preliminary conclusion that neither of these contentions has merit. See id. [A-096-99].

tity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A099]; see also id. [A092] & n. 9. These questions raise the issue of whether (as the defendants argue) the Conference is empowered to appoint the Mother Church's lawful Trustees and to determine who are its lawful members. The defendants claim to have that power, but they adduced no credible evidence at the trial to support that claim. I therefore conclude that the named plaintiffs (and other Trustees and members of the Mother Church) remain as lawful Trustees and members of the Mother Church. I further conclude, for the reasons which follow, that the persons found to be the lawful Trustees and members of the Mother Church have validly disaffiliated themselves and the Mother Church from the Conference.

The plaintiffs suggest that the Court may resolve the disaffiliation issue by reference to Delaware corporation law. (See Pl. Trial Br. at 27-34; Pl. Rep. Post-Trial Br. at 10.) Specifically, the plaintiffs cite 8 Del. C. §215(c), which provides that:

> Unless otherwise provided in this chapter, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this chapter, the certificate of incorporation or bylaws.

Id.

Neither the Mother Church's Articles of

Association (i.e., its certificate of incorporation) nor its bylaws prescribes general quorum standards for action by Church members (as opposed to quorum standards for certain specified actions, such as alienation of Church property). Therefore, the plaintiffs argue that by virtue of §215(c), the vote to disaffiliate was valid, since 82 of 229 members, representing 35.8% of the membership (i.e., greater than one-third), were present at the meeting called to vote on that issue; and 68 of those present, representing 82.9% of those in attendance (i.e., greater than a majority), voted to disaffiliate. (Trial Trans. at 254.) The plaintiffs also argue that a majority of the Mother Church's members subsequently ratified the earlier vote to disaffiliate. (See Pl. Exh. 2.)

Assuming (without deciding) that a membership vote was required in order to dis-

affiliate the Mother Church from the Conference,[4] the plaintiffs have established that the membership vote here met the requirements of §215(c) and therefore was valid. In addition, a majority of the

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[4]The parties join issue on whether the requisite membership vote to disaffiliate was obtained, and thereby at least tacitly suggest that a membership vote was required. However, as the ensuing discussion of Article 6th of the Mother Church's Articles of Association demonstrates, it is not entirely clear that a membership vote was needed to disaffiliate the Mother Church from the Conference. That Article indicates that a Trustee vote to disaffiliate may have been all that was required. The Court need not resolve this issue, though, because even if a membership vote was required, the membership vote obtained here was legally sufficient.

Mother Church's total membership later ratified the membership vote to disaffiliate (although it is not clear whether that was accomplished at a formal meeting called for that purpose). The defendants' only direct response to this analysis is to assert that "82 members was not a quorum, being fewer than half the members." (Def. Ans. Trial Br. at 13.) Again, the defendants provide no support for that contention, which contradicts the express language of §215(c).

The defendants next assert that those members of the Mother Church who voted to disaffiliate are no longer lawful members (or, where applicable, Trustees). The defendants rest that position on their interpretation of Article 6th of the Mother Church's Articles of Association which (they say) provides that "if some members refused to continue following the bylaws and regulations, but any members main-

tained those rules, then the dissidents would cease to be members, and the faithful minority would constitute the membership." (Id. at 13, 19.) From this the defendants conclude that those members who voted for disaffiliation "were no longer members," and that those members who voted against disaffiliation "were the Mother Church congregation then, and they were the ones who elected the new trustees whose names Pastor Moon submitted." (Id. at 13.) That argument is entirely meritless.

First, the defendants cite no credible evidence, nor can the Court locate any, that supports a finding that any valid election of new Mother Church Trustees ever occurred. See Mother Church v. The Conference, supra, [A091] & n. 7. On that basis alone, it must be concluded that the lawful Trustees of the Mother Church are the named plaintiffs and the other Trustees

listed in Plaintiffs' Exhibit 1.

Second, any effort by the defendants' to depose the plaintiffs as Trustees was legally ineffective, because Article 6th of the Mother Church's Articles of Association does not support the defendants' argument that the Mother Church's members and Trustees are no longer its lawful members and Trustees. Article 6th pertinently states that:

> . . . if it happens that the Members [of the Mother Church] shall become divided in opinion and a majority of them shall be unwilling to be governed by the Rules and principles that this Church is founded on, such of them so swerving from the true principles thereof shall be no longer Members of said [Mother Church], and if there should happen to be no more . . . [illegible] . . . of the Members of this Corporation than one maintaining the Rules that one shall hold the right and prerogative of the said Church. And that the By-Laws and regulations which shall be made by the Trustees from time to time together with these Articles of Association shall be deemed & taken to be; and shall be the true foundation of said Church, and the foundation on which the said Corporation shall exist.

(Pl. Exh. 3.)[5] The defendants interpret Article 6th to mean that those members who voted against disaffiliating from the Conference are now the only "true" members of the Mother Church. They reason as follows: First, Article 6th provides that the "true foundation of the church shall be the "By-Laws and regulations made by the Trustees . . . together with these Articles of Association." Second, the "bylaws" being referred to in article 6th are the by-laws of the Conference, i.e., the Book of Disci-

[5]The quoted portion of Article 6th differs from that which appears in the transcribed version introduced as Plaintiffs' Exhibit 3. A review of the original handwritten Articles of Association (on microfilm) reveals that errors in transcription, including the omission of several words, found their way into that particular trial exhibit.

pline. Third, those members who voted to disaffiliate from the Conference were of necessity (and in the language of Article 6th) "unwilling to be governed by the Rules and principles that this Church is founded on." Therefore, they "shall be no longer Members of said [Mother Church]," leaving only those members who voted against disaffiliation as the lawful members of the Mother Church.

That argument fails of its own weight, because the reference in Article 6th to "bylaws" can only be to the bylaws of the Mother Church itself, not those of the Conference. That must be so, since the Conference did not even exist at the time the Mother Church adopted its Articles of Association, including Article 6th. See Mother Church v. The Conference, supra, [A097] & n. 13.

Moreover, Article 6th affirmatively

established the legitimacy of the plaintiffs' position, not the defendants' position. That Article evidences that the founders of the Mother Church foresaw the possibility of a schism within the Church, and the problems a schism would create in both the temporal and spiritual realms if more than one group claimed to be the "true" Church. The final sentence of Article 6th shows that were such a division to occur, the bylaws and regulations adopted by the Mother Church's Trustees (along with the Articles of Association) would be the "true foundation" of both the Church and the corporation, i.e., would govern the resolution of that controversy. The Court has already concluded that the plaintiffs and other persons listed in Plaintiffs' Exhibit 1 are the lawful Trustees of the Mother Church. Because those Trustees voted unanimously to disaffiliate from the

Conference (Pl. Exh. 1), that act of disaffiliation was legally valid and effective by virtue of Article 6th. Moreover, because the defendants' "membership-identity" argument is without merit, it follows that the members of the Mother Church (at least as of the time they voted to disaffiliate) are (or were) the 229 persons listed in Plaintiffs' Exhibit 20, as I have already concluded above.

To summarize: the Mother Church, its Trustees, and its members (all of whom lawfully retain their positions) have the exclusive power (subject to the Mother Church's Articles of Association and bylaws) to control and dispose of the Church properties. They have not transferred those properties to the Conference or any one else. The Trustees (and, to the extent necessary, the members) have validly voted to disaffiliate the Mother Church from the

Conference. Finally, the defendants have shown no basis to alter the findings in this Court's May 15, 1991 Opinion that "(a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void ab initio." Mother Church v. The Conference, supra, [A095].

III.

The plaintiffs seek to have this action certified as a class action pursuant to Chancery Court Rule 23. The class is said to consist of the 229 persons who were members of the Mother Church immediately before the vote to disaffiliate. (See Pl. Exh. 20.) The apparent reason for seeking class certification is so that the Court's merits determination will bind all members of the Mother Church, including those who voted against disaffiliating from the Conference. That, in turn, would obviate pos-

sible future challenges to (and potentially inconsistent determinations regarding) the Mother Church's ownership of the properties in question. For the reasons which follow, the plaintiffs are entitled to have this action certified as a class action.

To maintain a class action under Rule 23, the plaintiffs must establish all four prerequisites of Rule 23(a) and at least one of the three requirements of Rule 23 (b). The four prerequisites of Rule 23(a) require the plaintiffs to demonstrate that:

> . . . (1) the class is so numerous that joinder of all members is impracticable, 2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The proposed class here easily meets those requirements. First, joinder of all members is impracticable because the proposed class would consist of 229 persons.

93-746

Supreme Court, U.S.
FILED
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NUMBER 93-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

APPENDIX TO PETITION

Volume II: Pages A055 - A110

K. KAY SHEARIN
1301 Maple Avenue
Elsmere DE 19805
302-995-6028

Counsel for Petitioners

Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co., D.Del., 95 F.R.D. 168, 174 (1982);[6] Weiner & Assoc. v. Krapf, Del.Supr., 584 A.2d 1220, 1225 (1991). Second, there are questions of law and fact (including who are the Mother Church's lawful Trustees and members) that are common to the class. Id. Third, the plaintiffs' claims are typical of those of the class, since they arise from the same events and are based on the same legal theories. Id. Fourth, the plaintiffs are adequate class representatives, since their interests are

[6]Chancery Court Rule 23 is substantially similar to Rule 23 of the Federal Rules of Civil Procedure, and accordingly federal court interpretations of that rule are persuasive authority. Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1094 (1989); Hoffman v. Cohen, Del.Supr., 538 A.2d 1096, 1097-98 (1988).

not antagonistic to -- indeed, they are aligned with -- the interests of the class.[7] Id. at 1225-26. Adequacy of representation is also sometimes determined by reference to the plaintiffs' counsel. Ortiz v. Eichler, D.Del., 616 F. Supp. 1046, 1058 (1985). In this case the plaintiffs' counsel are highly qualified and experienced, and have ably conducted this litigation.

The plaintiffs have also satisfied two

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[7] The defendants assert that "the named plaintiffs have shown such a profound lack of understanding of the issues that they are not qualified to represent the class members' interests adequately." (Def. Ans. Trial Br. at 22.) I conclude otherwise. The defendants provide no support for that argument, and the plaintiffs' trial testimony demonstrates that the named plaintiffs have a fully-informed understanding of the nature of this case.

of the requirements of Rule 23(b). First, to permit members of the proposed class to prosecute separate actions might create inconsistent results that would establish incompatible standards of conduct for the parties opposing the class (i.e., the Conference and Bishop Jackson), and that could impair the ability of other class members to protect their interests in the Mother Church. Manifestly, if those Mother Church members who voted against disaffiliation were allowed to prosecute separate actions, that would create a potential risk of adjudications inconsistent with that being rendered here. See Rule 23(b)(1); Weiner & Assoc., 584 A.2d at 1226. Second, final injunctive relief prohibiting the defendants from interfering with the plaintiffs' title in and enjoyment of the properties in question is necessary and appropriate in these circumstances. See Rule 23(b)(2);

Weiner & Assoc., 584 A.2d at 1226-27; Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1095 (1989).

The defendants oppose class certification on the ground that the plaintiffs lack standing to bring this action. (See Def. Ans. Trial Br. at 14-15, 22-23.) But the defendants' argument rests on their position concerning who constitutes the Mother Church's lawful Trustees and members -- a position that the Court has already rejected. Since the plaintiffs have already been found to be members of the Mother Church, they have standing to bring this suit in that capacity as a matter of law. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 113 (1952); Watson v. Jones, 80 U.S. 679, 714 (1872).[8]

[8]The defendants also argue that the Mother Church was prohibited by its governing doc-

For all of these reasons, this action will be certified as a class action.[9]

IV.

The plaintiffs next request this Court

uments from filing the suit. (See Def. Ans. Trial Br. at 12.) This argument is flawed because it rests on the assumption (which the defendants do not support) that the Book of Discipline constitutes the Mother Church's corporate bylaws. To repeat, the Book of Discipline is not part of the trial record and, in any event, as this Court found in its May 15, 1991 Opinion, nothing in that document supports the defendants' ipse dixit legal position.

[9]Since the Court has ruled that the plaintiffs are entitled to class certification, the class certification procedure as prescribed by Chancery Court Rule 23(c) must be implemented. Koffler v. McBride, Del. Ch., 282 A.2d 855, 858 (1971).

to adjudicate that the defendants and their counsel are in civil contempt of Orders of this Court for three separate activities: (A) filing and prosecuting a lawsuit in the United States District Court for the District of Delaware against the Mother Church's Trustees in the name of St. Paul's African Union First Colored Methodist Protestant Church of Washington, D.C. ("St. Paul's Church"); (B) improperly using the Mother Church facility during a time that other members were entitled to use that facility in accordance with this Court's temporary restraining order; and (C) publishing defamatory material that had been placed under seal by order of this Court. By way of sanctions, the plaintiffs urge that the defendants be fined and ordered to pay the plaintiffs' past and future legal costs, at least for defending the District Court litigation described below.

For the reasons which follow , I find that the conduct of defendants and their counsel, while in many respects bizarre, does not amount to civil contempt.

The purpose of a civil contempt determination is to coerce obedience to a court's order. Thus, a civil contempt sanction is coercive or remedial in nature, as distinguished from punitive, which is the nature of criminal contempt.[10] Delaware State Bar Ass'n v. Alexander, Del. Supr., 386 A.2d 652, 665 (1978); State v. Mancari, Del.Supr., 223 A.2d 81, 82 (1966) (In a civil contempt proceeding, the "keys to the jail are in defendant's hands."). Thus, for the plaintiffs to establish a civil contempt, they must show that the defendants violated an order of this Court, and that the sanction they seek is coercive

[10]The plaintiffs here do not seek a criminal contempt determination.

or remedial in nature.

The sanctions that the plaintiffs seek in connection with items (B) and (C), supra, fail to meet those requirements. In both instances the plaintiffs would have the defendants fined and ordered to pay the plaintiffs' legal costs. In these circumstances those sanctions necessarily are punitive, because they are designed to punish disobedience of this Court's order. They cannot be remedial or coercive, since the complained-of acts are now accomplished and cannot be undone or otherwise remedied by any sanction that this Court might impose. Delaware State Bar Ass'n, 386 A.2d at 665.

Moreover, the complained-of acts labeled as (A) and (C) did not violate a pre-existing order of this Court. On June 17, 1991, the defendants filed an application to certify an interlocutory appeal from this Court's Order granting a preliminary

injunction (item (C), supra). That certification application contained material that was scandalous, irrelevant, and not supported by any record evidence. (See Pl. Exh. 28, ¶5.) Nevertheless, shortly before or at the time the defendants filed the certification application, their counsel distributed copies of it to the press. (Pl. Exh. 29, Trans. at 24.) The Court (by then alerted to the problem) ordered the defendants' application to be sealed, but that order was not entered until June 19, 1991. By that point the harm had already been done. (Pl. Exh. 29, Trans. at 13-14.) Because the actions of defendants' counsel all occurred before June 19, they did not violate an existing order of this Court.[11]

[11]Moreover, the June 19th order only directed that one document -- the certification application -- be sealed. The defendants

Also claimed to constitute contempt is later filed other, different documents with both the Delaware and United States Supreme Courts that contained the same impertinent allegations (see Pl. Exhs. 30, 31), and the defendants' counsel publicly distributed copies of those documents. Although that conduct was not in keeping with the standards expected of counsel who practice before this Court, it did not violate this Court's June 19, 1991 Order. Ultimately, this Court was asked to, and did, order the defendants' counsel not to distribute further any copies of her petition for certiorari to the United State Supreme Court. Counsel appears to have complied with that order.

Although the defendants did not technically violate any order of this Court, their counsel has displayed, in the complained-of acts and in her conduct through-

the filing and prosecution of the District

out this litigation, a disturbing propensity to become personally identified with and involved in her clients' cause and litigation-related activities. Counsel appears, perhaps serendipitously, to have steered her clients through narrow loopholes in this Court's orders, or to have taken advantage of small windows of time before orders prohibiting the challenged conduct would be entered. She has also come perilously close to being a witness in this case, by becoming personally involved in (in some cases, an instigator of) certain of the activities of which the plaintiffs complain. While vigorous advocacy by an attorney is to be expected, the attorney must take care not to cross the line between being an advocate for, and a personal participant in, a client's cause. When that line is crossed and the "attor-

Court action by St. Paul's Church (item (A), supra). Because that matter is somewhat more complex, some background is again helpful. on April 19, 1991, this Court entered its temporary restraining order which pertinently directed that:

> The defendant, and his agents, employees, officers, successors, assigns, and all others acting in concert with him are hereby enjoined and restrained from interfering with the quiet title, use, enjoyment and governance of The Church facility located at Ninth and Franklin Streets, Wilmington, Delaware, by the duly elected trustees of the [Mother Church] or by its members during the following times . . . .

(Pl. Exh. 32.) The plaintiffs then prosecuted their motion for a preliminary in-

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> ney" and "client" roles are blurred so as to become indistinguishable, it becomes difficult for the attorney to discharge properly the duties that flow from the other roles the attorney must occupy, namely, that of objective advisor to her client and officer of the Court.

junction, which was argued on May 6, 1991, and was decided in the plaintiffs' favor on May 15, 1991.

On May 8, 1991 (two days after oral argument before this Court on the preliminary injunction motion), St. Paul's Church filed an action in the United States District Court for the District of Delaware (the "District Court action"). St. Paul's Church is a Washington, D.C. church that is a member of the Conference. In the District Court action, St. Paul's Church sought to enjoin the Trustees (two of whom are plaintiffs in this action) from interfering with St. Paul's Church's title to the properties of the Mother Church in this case. Although the essential predicate of the District Court complaint was that St. Paul's Church had some independent "title" to or other cognizable interest in the Mother Church's properties, in fact that

was not the case. And while the defendants deny that St. Paul's Church was acting as their agent in filing the District Court action, the record clearly shows otherwise.[12] In reality the District Court ac-

[12] The record establishes that St. Paul's Church, acting through its pastor, the Rev. Jonah Lindsay, was the defendants' agent in bringing the District Court action. Rev. Lindsay signed the complaint in the District Court lawsuit. (Pl. Exh. 21.) Bishop Jackson has admitted that Rev. Lindsay is a Conference official. (Pl. Exh. 12, Jackson Dep. at 156-57.) Moreover, the record also reveals a pattern of activity in which Bishop Jackson and Rev. Lindsay worked together in the power struggle against the Mother Church's Trustees which culminated in the litigation of this Court. (See id.; Pl. Exh. 19; Pl. Exh. 18, ¶5; Pl. Exh. 16, Moon Dep. at

tion was a thinly disguised effort by the

15-16.) Rev. Lindsay even had Bishop Jackson's (and the Conference's) counsel bring the District Court lawsuit. (Pl. Exhs. 21-23.) Finally, the defendants have not shown (or even articulated) what independent legal interest a church located in Washington, D.C., would further by seeking to interfere in the affairs of an independent church located in Wilmington, Delaware. Indeed, any standing of St. Paul's Church to assert an interest in properties of the Mother Church could only have been as an agent of the Conference (or Bishop Jackson). As the defendants acknowledge, "St. Paul['s Church] has the same relationship to the Bishop the Mother Church has." (Def. Ans. Trial Br. at 23.) That is, the only connection existing between St. Paul's Church and the Mother Church is through the Conference of which both chur-

defendants to remove to a federal forum a controversy that had previously been argued and made sub judice before this Court, in order to derail a preliminary injunction that the defendants apparently (and correctly) anticipated.

The District Court complaint alleged that this Court's temporary restraining order violated the Federal Civil Rights Act and the United States Constitution. That complaint, however, was based upon the identical facts and merits theory that the defendants were simultaneously presenting to this Court. Concurrently with the filing of the District Court action, St. Paul's Church moved for a federal court order temporarily restraining the Mother

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ches were members. Therefore, the only interest that St. Paul's Church could claim in the Mother Church would be by virtue of its membership in the Conference.

Church Trustees from (among other things) continuing to prosecute this (Chancery) action. That motion was heard on May 10, 1991, five days before this Court handed down its preliminary injunction opinion. In an oral ruling, then-District (now Third Circuit) Judge Jane R. Roth denied the motion, and in setting forth her reasons, stated:

> I am also concerned by the equities of the situation in that, as Ms. Shearin has described, the role of St. Paul's Church in the Conference, and as I reviewed the language of the temporary restraining order issued by the Court of Chancery, I would find that it would seem very likely that St. Paul's Church would fall into the category of all others acting in concert with Bishop Jackson. Therefore, I think there is a strong argument to be made that the plaintiffs here are in contempt of Chancery. That, in the area of equities, would also be a persuasive factor in not issuing the temporary restraining order out of this court.

(Pl. Exh. 22 at 31-32.)

Judge Roth then admonished counsel that before proceeding further she (Ms.Shearin) should consider very carefully whether

this Court's restraining order applied to St. Paul's Church in the District Court action as it did to the defendants in this Chancery action. Judge Roth repeated that admonition in her order of the same date:

> The Court admonishes plaintiff to carefully consider whether it is covered by the temporary restraining order issued by the Court of Chancery of the State of Delaware on April 19, 1991 in Morris A. Comegys, et al. v. Delbert L. Jackson, C.A.No. 12055 (Del.Ch. 1991), which binds Defendant Delbert L. Jackson "and his agents, employees, officers, successors, assigns, and all others acting in concert with him." The Court will closely review this matter both on the issue of whether abstention is appropriate under Younger v. Harris, 401 U.S. 37 (1971) and Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987), and on the question of whether Rule 11 sanctions may be appropriate as suggested by defendants.

(Pl. Exh. 23, ¶2.)

Despite those admonitions, the plaintiff in the District Court action (which was acting as a proxy for and on behalf of the defendants in this action) continued to prosecute that lawsuit. Thereafter, Judge

Roth's successor, District Judge Sue L. Robinson, dismissed the District Court action on the ground of abstention, noting that although St. Paul's Church had been ordered to review the application of the abstention doctrine to that case, it "has failed to address the doctrine as well as any procedural bars preventing state review of alleged constitutional violations." St. Paul's Church v. Comegys, D.Del., C.A.No. 91-72-SLR, Robinson, J., Mem.Op. at 5 (Mar. 24, 1992).

Undoubtedly spurred by the admonitions in Judge Roth's May 10, 1991 Opinion and Order, the plaintiffs now ask this Court to determine that the defendants' prosecution of the District Court action was a contempt of this Court's April 19th Order prohibiting them (or their agents) from "interfering with the quiet title, use, enjoyment and governance of The Church facil-

ity." (Pl. Exh. 32.) There is no question that by seeking to relitigate in a federal forum claims that should have been raised and prosecuted in this forum, the defendants were attempting an "end run" around this Court's April 19, 1991 temporary restraining order. It is also clear that from the start the effort was a misadventure that gained the defendants nothing (except added expense) and did little to enhance their counsel's professional stature. Given the District Court action's transparent purpose, the defendants' conduct was less than commendable. However, having considered the defendants' conduct in light of the strict requirements for civil contempt, I am constrained to conclude that it did not violate any clear directive of this Court's April 19, 1991 Order. Therefore, that conduct, while creating cause for concern for other reasons

(see n. 11, supra), did not amount to civil contempt.

A cardinal requirement for any adjudication of contempt is that the order allegedly violated give clear notice of the conduct being proscribed. Dover Veterans Council, Inc. v. City of Dover, N.H.Supr., 407 A.2d 1195, 1196 (1979) ("It is a prerequisite to the exercise of the civil contempt power that the underlying order clearly describe what the alleged contemnor must do to avoid the sanction."); Mattingly v. Houston, Md. Ct. App., 250 A.2d 633, 635 (1969) ("Before a person may be held in contempt for violation of an order or decree it must be definite, certain and specific in its terms."); State v. Pownal Tanning Co., Vt.Supr., 459 A.2d 989, 991 (1983) ("We agree that as a general rule before a person may be held in contempt for violating a court order, the order should

inform him in definite terms as to the duties imposed upon him. The order must be specific and definite so that it leaves no doubt as to its meaning.").

This Court's April 19, 1991 Order proscribed certain conduct. However, the filing of an action in another court was not included. Had the possibility of that kind of collateral attack been suggested at the time the April 19th Order was entered, the Court would certainly have prohibited such conduct, at least insofar as it was calculated to interfere with the Court's legitimate jurisdiction over this controversy. However, as entered, the temporary restraining order did not expressly forbid the filing of any lawsuits in another court, and cannot fairly or objectively be read to have done so by implication.

For the above reasons, none of the three complained-of acts rises to the lev-

el of a contempt of any order entered by this Court.

V.

The plaintiffs also seek an order directing the defendants to pay their legal fees. The apparent basis for that claim is that the same conduct by the defendants that the plaintiffs argue amounted to contempt (see Part IV, supra) also constituted bad faith.

This Court has the power to award legal fees incurred by a party by reason of bad faith acts by the opposing party in the course of litigation. Tandycrafts, Inc. v. Initio Partners, Del.Supr., 562 A.2d 1162, 1164 (1989); Weinberger v. UOP, Inc., Del. Ch., 517 A.2d 653, 656 (1986). While the complained-of conduct was a product of defense counsel's flawed perception of her professional role and of what constituted appropriate litigation strategy, I cannot

conclude, based on the evidence presented, that those tactics amounted to "bad faith" as would justify shifting the plaintiffs' legal fees to the defendants.[13] The defendants' tactics were, it appears, employed to further their (incorrect) perception that they had a legitimate interest in the properties at issue. The Court is aware that defense counsel's tactics forced plaintiffs' counsel to expend additional legal time and work that would otherwise have been unnecessary. Those additional efforts will be taken fully into account in any fee

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[13]The Court does not purport to opine as to whether bringing the District Court action violated Rule 11 of the Federal Rules of Civil Procedure. That issue was apparently raised (or at least suggested) by the plaintiffs in their capacity as defendants in the District Court action, and was an issue to be decided by the District Court.

application presented to this Court by plaintiffs' counsel at the conclusion of this case.

VI.

Lastly, the defendants advance several counterclaims and procedural arguments. They contend that: (i) the Conference is entitled to an accounting, money damages, and attorney's fees from the Mother Church's Trustees; (ii) Bishop Jackson is entitled to money damages; (iii) because the Court has certified a plaintiff class, it should also certify the class as counterclaim defendants so that the defendants can recover damages on a class-wide basis; (iv) the Court should not have granted the preliminary injunction, and would not have done so had a portion of the record not inadvertently failed to reach the Court; and (v) the Conference's business records should have been admitted into evidence at

trial.

The defendants' counterclaims are based on the defendants' position that the Mother Church's Trustees and members are not the lawful Trustees and members (see Def. Ans. Trial Br. at 25-26), which position the Court has rejected. Because those counterclaims are meritless, so too is the defendants' request for certification of a class of counterclaim defendants. The defendants' remaining contentions amount to rearargument. In addition to lacking merit, those contentions come far too late.

* * *

For the above reasons, I find that the properties in question belong to the Mother Church, whose Trustees and members have the exclusive power to dispose of them and to govern the affairs of the Mother Church as set forth in its Articles of Association. The lawful congregation of the Mother

Church (as of the time of the vote to disaffiliate) consisted of the 229 individuals listed in Plaintiffs' Exhibit 20. The lawful Trustees of the Mother Church are the named plaintiffs and the other individuals listed in Plaintiffs' Exhibit 1, all of whom validly voted to disaffiliate the Mother Church from the Conference. To the extent that a membership vote was necessary, the requisite number of members also validly voted to disaffiliate the Mother Church from the Conference. Counsel shall submit a form of order consistent with this Opinion.

Civil Action No. 12055

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware Corporation,
MORRIS A. COMEGYS and SARA B. GARDNER,
individually and on behalf of all others similarly situated,
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware corporation,
and DELBERT L. JACKSON,
Defendants.

MEMORANDUM OPINION

Date Submitted: May 7, 1991
Date Decided: May 15, 1991

Paulette S. Moore, Esquire, of DOROSHOW, PASQUALE & LINARDUCCI, Wilmington, Delaware; Thomas S. Neuberger, Esquire, Wilmington, Delaware; Attorneys for Plaintiffs.

K. Kay Shearin, Esquire, Wilmington, Delaware; Attorney for Defendants.

JACOBS, Vice Chancellor

At issue on this motion for a preliminary injunction are the ownership rights to a church building and other properties that until recently were titled in the name of Mother African Union First Colored Methodist Protestant Church ("Mother Church"), a Delaware corporation. The competing claimants to those properties are the Mother Church and its Trustees, who are the plaintiffs; and The Conference of African Union First Colored Methodist Protestant Church (the "Conference"), a Delaware corporation, and its Bishop, Delbert L. Jackson ("Bishop Jackson"), who are the defendants.[1]

Plaintiffs filed this lawsuit on April 18, 1991 to remedy certain actions taken by or at the direction of Bishop Jackson. On April 9, 1991, a majority of those persons present at a special congregational meeting voted to disaffiliate the Mother Church from the Conference.[2] The complaint alleges that, in response, Bishop Jackson wrongfully caused the locks to be changed on the church building, posted security guards at the church building, and barred members of the Mother Church from using the building as a place of worship. The plaintiffs claim that neither Bishop Jackson nor the Conference have any ownership rights in, or right to control, the properties at issue, and that such rights reside solely in the Mother Church and its Trustees. The plaintiffs ask this Court to so declare.

The complaint also alleges that on April 6, 1991, after Bishop Jackson learned of the scheduled April 9, 1991 special meeting to consider seceding from the Conference, he caused

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[1] The original parties were the Trustees and Bishop Jackson. As a result of a suggestion made by the Court, the Mother Church and the Conference were later joined as parties plaintiff and defendant, respectively, to enable the Court to afford effective relief.

[2] Unfortunately the terminology is somewhat confusing, because the "Conference" is used to refer not only to the corporate defendant of which defendant Jackson is the Bishop, but also to describe the larger religious association with which certain local churches, including the Mother Church, were affiliated. See Part I, *infra*, of this Question.

deeds transferring the Mother Church's properties to the Conference to be executed and recorded. The plaintiffs further allege that those deeds were not authorized or executed by the plaintiff Trustees, and on their face are fraudulent and a cloud on the Mother Church's title. As a consequence, the plaintiffs seeks an order removing all existing clouds on the title to the Mother Church's properties, enjoining the defendants from further clouding the title, and from otherwise interfering with the plaintiffs' quiet title, use, and enjoyment of those properties.

At the time they filed their complaint, the plaintiffs also moved for a temporary restraining order and a preliminary injunction restoring their (and their congregation's) access to the church properties *pendente lite*. On April 19, 1991, after a hearing, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware by [the Conference]" during the particular days of the week and the times specified in that Order.

On May 6, 1991, after expedited discovery and briefing, a hearing was held on the plaintiffs' motion for a preliminary injunction. Supplementary memoranda were submitted on May 7, 1991.[3] This is the decision of the Court on that motion.

I.

The core issue on this motion is which corporation — the Mother Church or the Conference — owns and is legally entitled to control the contested properties. That issue turns importantly on two subsidiary questions: (1) which corporation holds legal title to those properties, and (2) if the Mother Church holds title,

[3] Thereafter, on May 8, 1991, the defendants submitted a large box of documents to the Court, unsolicited and with no cover letter explaining their relevance. The Court attempted to examine those materials, but has found nothing that sheds further light on the issues pertinent to this motion.

whether it has ceded to the Conference its ownership rights or its power to control the use and disposition of those properties. The facts now recited pertain to those questions. Except where noted, those facts are based upon uncontested documents, and are undisputed.

The Mother Church was incorporated as the "African Union Church" on September 18, 1813. (Jackson Dep., Exh. 9; A-150).[4] Article 2nd of that corporation's 1813 certificate of incorporation reads as follows:

> The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Article 4th of that certificate delineates specific requirements that must be satisfied before any property of the corporation can be transferred or encumbered:

> The said Trustees nor their Successors shall not by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation; nor Mortgage nor Pledge the same for payment of any Debts by them Contracted to any person or persons whomsoever, *unless the same shall be done with the consent of two thirds of the regular Members of the said Corporation.* (Emphasis added).

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[4] "A__" refers to the Appendix to the Plaintiffs' Opening Brief in Support of their Motion for a Preliminary Injunction.

Article 5th provides that an election shall be held for the membership to vote for Trustees of the corporation. One new Trustee will be elected each year, and that Trustee shall then serve a term of seven years. Article 5th further provides that:

> [T]he said Trustees and their successors shall have the entire direction and disposal of the temporal revenues and concerns of the said Church. . . ."

On July 14, 1924, the Mother Church's certificate of incorporation was amended to change the corporate name to "Mother African Union First Colored Methodist Protestant Church," *i.e.*, the Mother Church. (A155-157). Insofar as the record reveals, that amendment is the only one ever made to the 1813 certificate of incorporation; and it left unaffected the remaining provisions of the original 1813 certificate, including Articles 2nd, 4th, and 5th, which remain in force today.

The plaintiffs are the Trustees of the Mother Church, and the duly elected successors to the Trustees named in the original 1813 certificate. There is no claim or evidence that the plaintiffs were not duly elected as Trustees in accordance with the procedures spelled out in that certificate.

There also is no dispute that until April 6, 1991, the Church owned three properties in Wilmington, Delaware ("the properties"): (i) the church building, located at West Ninth and Franklin Streets, which was deeded to the Church on November 4, 1969 (A19-21); (ii) the Pastor's home, located at 125 West 38th Street, which was deeded to the Church on October 22, 1969 (A23-24); and (iii) Mount Olive Cemetery, located on Lancaster Avenue.

There is no evidence of record that the plaintiff Trustees ever transferred the properties to, or for the benefit of, any other person or entity, or that two-thirds of the corporation's regular members ever assented to any such transfer. Indeed, three of the Trustees, including the oldest living Trustee, have testified

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by affidavit that the Trustees never authorized or executed a document, ratified by two-thirds of the corporation's members, that placed any asset of the Church in trust for the benefit of any other entity or organization. (A127-135). That evidence stands uncontroverted.

The other party litigant that claims ownership rights in the aforementioned properties is the Conference. For many years, the Mother Church has had a relationship of some kind with the Conference respecting their common spiritual enterprise. However, from a strictly corporate standpoint, the Conference and the Mother Church have always been separate entities. Although the defendants contended at oral argument that the Conference was the corporation founded in 1813 as the "African Union Church," the record shows otherwise. The Conference was incorporated on September 19, 1941 as the "African Union First Colored Methodist Protestant Church." On March 10, 1953 its certificate of incorporation was amended to change the corporate name to "The Conference of African Union First Colored Methodist Protestant Church," *i.e.*, the Conference.

Article THIRD of the 1941 certificate recites that one of the corporation's purposes was:

> To incorporate and unite the Church Government of the Colored Methodist Protestant Churches under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church of the United States of American or elsewhere as particularly set forth in its Sixteenth Revised Printed Edition of said Doctrine and Discipline published at Wilmington, Delaware, September 8-14, 1926, and the Amendments and additions thereto as afterwards made.

Article THIRD also provides that the corporation was "created solely for Religious and educational purposes," and Article SEVENTH provides that the Conference's temporal affairs shall be conducted by that corporation's Trustees who:

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> [S]hall have control of the disposal of the property of *the Corporation*, [and] shall also have power to make, amend, alter or rescind the By-laws of their respective Churches . . . subject, nevertheless to the Rules of Discipline of the General Conference, which General Conference shall in itself be created and established, and its membership shall be composed as set forth in the Rules of Discipline of said Church as hereinbefore referred to. (Emphasis added).

Consistent with Article SEVENTH, Article NINTH provides that:

> There shall be a general conference whose time and places of meeting and membership shall be as prescribed in the Book of Discipline and Doctrine of said Church, and the authority of such Conference shall be superior to that of the Trustees and Members of the individual Church and shall control and direct such Trustees and Members as is more fully from time to time prescribed in said Book of Discipline and Doctrine.

The precise relationship between the Conference and its member churches is anything but clear. What can be gleaned from the record is that the Conference was created as a corporate vehicle to carry out the purposes of an earlier-formed voluntary union, association, or affiliation of the various African Colored Methodist Protestant Churches in a spiritual and religious enterprise. That enterprise, which was formed in 1866, is sometimes described as the "Conference" or the "General Conference." The record further indicates that the terms and conditions of that union, association, or affiliation, are governed at least in part by the *Book of Discipline*, the 1990 version of which has been placed of record.[5]

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[5] The full title of that document is *The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World.*

The Historical Preface to the 1990 *Book of Discipline* recites that a General Convention was held in Baltimore, Maryland on August 25, 1866. That Convention founded a General Conference and created a *Book of Discipline*. The preface goes on to state that the representatives of the African Union Church and the First Colored Methodist Protestant met in General Convention on November 25, 1865 and that the Convention resolved to adopt:

> [A] platform to unite the two branches of Zion into one Church, to be known and distinguished by the name of the African Union First Colored Methodist Protestant Church of the United States of America, or elsewhere.
>
> And to consummate this Union the General Convention does hereby constitute a General Conference, to consist of an equal number of delegates from each Church, to be held in the city of Wilmington, Delaware, on the morning of the 25th day of August A.D., 1866.

(Jackson Aff., Exh. 2, pp. ii-iii).

The resolution goes on to recite that the "First General Conference of the Representatives of the African Union Church, and the First Colored Methodist Church, assembled [and] did then and there form a book of discipline for their future government. . . ." (Jackson Dep., Exh. 2, pp. ii-iii).[6]

From the foregoing the following may be concluded, at least preliminarily: (a) The Conference is a corporation entirely distinct and separate from the Mother Church, having been incorporated 128 years after the Mother Church was formed, in order to carry out the spiritual and religious objectives of the

[6] The record does not evidence the authenticity or authorship of that resolution, or that the Mother Church formally assented to its provisions. The plaintiffs concede, however, that the Mother Church was, while affiliated with the Conference, subject at least spiritually to the *Book of Discipline*.

General Conference that was established in 1866; (b) The two corporations have not merged, and their relationship, while not easily characterized, is defined at least in part by the *Book of Discipline* which, since its adoption in 1866, has been amended several times; and (c) However the relationship between those corporations may be characterized, there is no evidence that it supplants the power of the Mother Church's Trustees and membership to control the disposition of that Church's physical properties.

The instant litigation is the apparent culmination of a dispute between Bishop Jackson and the late Reverend Maynard Smith, the former Pastor of the Mother Church. According to Bishop Jackson, Reverend Smith was expelled from the Conference. (Jackson Aff., para. 13). When Reverend Smith died, the Bishop or some other agent of the Conference attempted to prevent the funeral from being held at the church building. The Trustees refused to accept that ruling, and allowed Reverend Smith's funeral to take place at the church building.

That and other disputes eventually led the Trustees of the Mother Church to convene a special meeting of the membership on April 9, 1991, to vote on whether to secede and disaffiliate from the Conference. At that meeting, 82 of the approximately 185 members of the congregation attended, and by a vote of 68 to 10 (with 4 abstentions), the members determined to secede from the Conference. The Trustees also voted to secede. (A133, 136).

In anticipation of, or in response to, those actions, Bishop Jackson and/or the Conference took certain measures. They were as follows:

a) On April 6, 1991, Bishop Jackson witnessed eight quitclaim deeds that were recorded with the New Castle County Recorder of Deeds. One of those deeds purported to transfer the contested properties from the Mother Church to the Conference. (A28-35). The deed was not signed or authorized by the plaintiff

Trustees. According to Bishop Jackson, the deeds were executed pursuant to authority granted by resolutions adopted at Conference meetings held on January 12, 1991 and April 6, 1991. (Jackson Aff., paragraphs 21-23). However, no minutes or other document evidencing the proceedings at those meetings were ever placed of record.

b) On April 8, 1991, Bishop Jackson removed then-Pastor Gunther, and replaced him by appointing Thomas E. Moon as Pastor of the Mother Church.

c) On April 10, 1991 the Bishop and/or agents of the Conference purported to remove the plaintiff Trustees "as trustees and as members of the Church, according to church law as set forth in the *Book of Discipline* and in the April 6th resolution . . . ." (Jackson Aff., para. 14). Apparently that was done, in part, because the Trustees had refused to accept Reverend Moon as the Pastor.

d) On April 14, 1991, Reverend Moon asked three persons to be the new Trustees of the Mother Church.[7]

After the April 9, 1991 secession vote, Reverend Moon, with Bishop Jackson's permission, caused the locks on the Church building to be changed and posted security guards outside. (Moon Aff., paragraphs 4-5). As a result, and until this Court issued its temporary restraining order, the members of the congregation were forbidden access to the church building and prevented from worshiping there.[8]

This litigation followed.

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[7] In his affidavit, Reverend Moon states that his Trustee-designees were elected by a "congregation." (Moon Aff., para. 7). That statement is, however, conclusory and contains no specific facts as to who comprised that "congregation" or by what process that election took place.

[8] It is also claimed that Bishop Jackson attempted to remove funds from the Mother Church s bank accounts and to put the Church's properties up for sale. Those claims are, however, disputed and need not be decided on this motion.

II.

This case represents but one aspect of a larger and highly regrettable controversy: a church divided. That lamentable circumstance inevitably leaves in its wake a host of spiritual and social problems, in addition to those purely legal. Who is now the minister of the congregation? Who are the Trustees? Who are and are not members of the Mother Church?[9] Of these questions this Court is competent to address only the legal, and even then only within the constraints of the First Amendment to the United States Constitution as interpreted by decisions of the United States Supreme Court.

Those decisions forbid civil courts from deciding church property disputes on the basis of religious doctrine and practice. Such courts may — indeed must — resolve such disputes only on the basis of "neutral principles of law," without considering doctrinal matters such as the "ritual and liturgy or the tenets of faith..." *Jones v. Wolf*, 443 U.S. 595, 603 (1979) (quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)); *accord Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Under a neutral principles approach, a civil court may consider, and resolve church property disputes on the basis of, sources such as state statutes, church corporate charters and constitutions, and the language of trusts, deeds and similar granting instruments. If, however, the interpretation of instruments of ownership would require the court to resolve a religious controversy, the court must defer that doctrinal decision to the authoritative ecclesiastical body. *Jones v. Wolf*, 443 U.S. at 604; *Serbian Orthodox Diocese*, 426 U.S. at 709.

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[9] To the extent this Court is empowered to answer those questions, the answer must await a final hearing. The questions are complex and cannot be decided at this preliminary stage. Indeed, neither counsel has fully briefed these questions.

Mindful of these highly sensitive concerns, the parties have cast their dispute largely on the basis of Delaware corporate and property law principles. And while the defendants have based certain of their preliminary injunction arguments upon the *Book of Discipline*, those arguments do not require this Court to interpret or determine religious doctrine. Essentially what must be decided at this preliminary stage is which corporation — the Mother Church or the Conference — owns the disputed properties. The remaining issues raised by the complaint (to the extent they are constitutionally cognizable) must await the final hearing.

The criteria on a motion for preliminary injunction are well established. The moving party must show probable success on the merits, imminent irreparable harm that will occur absent the injunction, and that the irreparable harm that would result if injunctive relief is denied outweighs the harm that would occur if relief is granted. *Ivanhoe Partners v. Newmont Mining Corp.*, Del. Supr., 535 A.2d 1334, 1341 (1987); *Robert M. Bass Group, Inc. v. Evans*, Del. Ch., 552 A.2d 1227, 1238 (1988).

In this case the harm threatened to the plaintiffs clearly will be imminent and irreparable if injunctive relief is denied. Such harm will also outweigh any likely harm to the defendants if relief is granted. What the plaintiffs will be deprived of is the unfettered use of their property, including their congregants' right to use the church building as a place of worship. Moreover, the defendants, by executing and recording the April 6, 1991 deed purporting to transfer the disputed properties to the Conference have seriously clouded the Mother Church's title to these properties. The harm occasioned by these acts is immediate and substantial, and it cannot be remedied except by an injunction. Nor is there any showing that granting preliminary injunctive relief would harm the defendants more than denying relief would harm the plaintiffs. The defendants intimate that the balance of equities favor their position, but offer no reasoned argument or any evidence to support their suggestion.

Consequently, this motion turns solely upon whether the plaintiffs have demonstrated that they will probably succeed on the merits after a final hearing. For the reasons now discussed, I find that they have, and that a preliminary injunction must issue.

III.

Any analysis of the claims pertinent to this motion must begin with certain fundamental, undisputed facts. Before April 6, 1991, title to the disputed properties resided in the Mother Church. On April 6, 1991, the defendants executed a deed purporting to transfer title to those properties to the Conference. The question, simply put, is whether that April 6, 1991 deed was authorized by persons lawfully entitled to act on behalf of the Mother Church. If so, then no basis for injunctive relief exists; if not, then injunctive relief must be granted. As discussed in Part III A, *infra*, only the Mother Church's Trustees, with the formal concurrence of two-thirds of the members, are empowered to transfer those properties, and those persons never authorized the April 6, 1991 deed. The defendants contend, nonetheless, that despite the authority vested in the Mother Church's Trustees and membership, the *Book of Discipline* and certain purported amendments thereto give the Conference superior, overriding authority over the disputed properties. For the reasons discussed in Part III B, *infra*, I find that the defendants' position has no probable merit.

A.

Article 4th of the Mother Church's certificate of incorporation provides that the Trustees "*shall not* by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation . . . *unless* the same shall be done with the consent of two-thirds of the regular Members of the said Corporation." (Emphasis added). It is

undisputed that the plaintiff Trustees have never deeded any of the disputed properties to the Conference. Nor have two-thirds of the Mother Church membership ever approved any such property transfer or the execution of the April 6, 1991 deed.

Thus, based on the Mother Church's most fundamental corporate document — its certificate of incorporation — I find at the threshold that (a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void *ab initio*. For those reasons the plaintiffs have established a high probability of success on the merits of their claims, unless the defendants can demonstrate a superior claim of entitlement to the disputed properties. The defendants assert that they have demonstrated such a superior, overriding claim, arguing that (1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees.[10] I now address those contentions.

B.

The defendants premise their claim of superior entitlement upon their contention that the Conference is a hierarchical organization whose members (*i.e.*, the local churches, including the Mother Church) occupy a subordinate position that makes

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[10] In addition to their substantive contentions, the defendants raise two procedural defenses that, they urge, mandates the denial of injunctive relief. Defendants argue that the plaintiffs have no standing to seek relief because they are no longer members of the Mother Church. That argument, however, has been mooted by the joinder of the Mother Church as a party plaintiff. The defendants also contend that the Bishop is not a proper party defendant, because no relief would be effective as against him. That argument is mooted by the joinder of the Conference as a party defendant; moreover, the Bishop is a proper party defendant because the complaint, fairly read, alleges that the acts complained of were committed by him or by others acting under his control. Accordingly, neither procedural defense has colorable merit.

them subject to direction by the Conference in accordance with the *Book of Discipline*. The defendants rely upon two documents that, they claim are resolutions adopted by the Conference on January 12, 1991 and April 6, 1991, respectively, and constitute amendments to the *Book of Discipline*. The January 12, 1991 document pertinently provides that "titles to all properties held . . . by a local church . . . shall be held in trust for [the Conference]." (Jackson Dep., Exh. 3, p. 1). The April 6, 1991 document provides that "the ministers in charge of said [local] churches shall be empowered to sign official documents pertaining to the individual local church and the Conference. . . ." (Jackson Dep., Exh. 4). Based upon those documents, the defendants conclude that the April 6, 1991 deed transferring the properties to the Conference was valid, because (i) those properties were held in trust for the Conference, and (ii) the local minister had the authority to execute a deed transferring the Mother Church's property, notwithstanding the Trustees' and the members' authority conferred by the 1813 certificate of incorporation.

These arguments have no merit for several reasons.

First, while a hierarchical relationship between the Mother Church and the Conference may arguably exist in the religious and spiritual realms,[11] no such relationship has been shown to exist in the temporal realm that governs the ownership and control of the Mother Church's properties. The Mother Church's 1813 certificate of incorporation expressly provides the procedure by which any transfer of the corporation's assets must take place. To validly cede to another entity the Mother Church's power to dispose of its assets, the 1813 certificate provision mandating that procedure would have to be amended in an appropriate way. That has never occurred.

[11] The Court expressly disclaims making any finding as to whether a hierarchical relationship exists in the religious and spiritual realms. Even if such a finding were within this Court's sphere of competence, it is unnecessary to a resolution of the pending motion.

Second, it is undisputed that neither the plaintiff Trustees nor their predecessors have ever executed any document, ratified by two-thirds of the Mother Church's members, placing any of the Mother Church's assets in trust for the benefit of any other entity. Nor has any other evidence of a trust arrangement, particularly evidence that would satisfy the evidentiary requirements of the Statute of Frauds, been submitted. *See* 6 *Del. C.* sec. 2714(a). *See also* 76 Am. Jur. 2d, *Trusts*, sec. 44 at 290-91, 294 (1975).

Third, by the defendants' own characterization, those documents occupy, at best, the status of By-laws of the Mother Church. Assuming without deciding the validity of that characterization,[12] the January 12th "by-law" placing local church properties "in trust" for the Conference runs afoul of the principle that where a by-law conflicts with the provisions of the charter, the by-law is a nullity. 8 *Del. C.* sec. 109(b); *Centaur Partners v. Nat. Intergroup, Inc.*, Del. Supr., 582 A.2d 923, 929 (1990); *Burr v. Burr Corp.*, Del. Ch., 291 A.2d 409, 410 (1972). The January 12th document conflicts with the 1813 certificate of incorporation, because Article 2nd of the certificate states that the land is held in trust for the religious uses of the "said Union Church," which is now the Mother Church – not the Conference.[13] The April 6th document (which purports to empower the minister to transfer church property on behalf of the

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[12] For present purposes, the Court simply accepts *arguendo* Bishop Jackson's characterization that the *Book of Discipline* contains the current rules of the Church, which are the "by-laws of the corporation." (Jackson Aff., para. 9). Defendants' counsel also advocated that characterization at oral argument.

[13] At oral argument, defendants' counsel relied upon Article 2nd of the 1813 certificate of incorporation, which states that the church properties are held in trust for the religious uses of the "said Union Church." Counsel argued that the "Union Church" and the Conference were one and the same. However, the evidence shows precisely the contrary: the Conference (as an association) did not come into existence until 1866, and it did not take a corporate form until 1941. The 1813 certificate could not possibly have created a trust relationship in favor of an organization that did not then exist.

Trustees) conflicts with the certificate of incorporation, because Article 4th prohibits *any* disposition of Church assets without the approval of the Trustees and two-thirds of the corporation's members. Again, no such consent was given here.

Fourth, the documents, by their own terms, do not create any superior title or claim of title in the Conference. Section II of the January 12th document states that "All provisions of the Discipline relating to property . . . and relating to the formation and operation of any corporation . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith [sic] the local laws shall prevail. . . ." (Jackson Dep., Exh. 3, p. 3). "Local law" is defined to include "the laws of the county, state, or other like political unit within the geographical [sic] bounds of which the church property is located." *Id.* Thus, by its own terms, the January 12th "by-law" trust provision gives way to local law. Under local law, the Mother Church clearly owns the properties. See Part III A, *supra*. And while the April 6th document purports to empower the minister in charge to sign official documents pertaining to the individual local church, it does not authorize the minister to do so without the consent, or over the opposition, of the Trustees in matters where Trustee approval is required.

Fifth, the January 12th and April 6th documents do not constitute credible evidence that the Conference ever took the actions that the defendants attribute to it. Neither document appears on the stationery of the Conference: the letterhead is of an organization having a different name. The record contains no minutes or other documents evidencing official action taken by the Conference on those dates — only the Bishop's conclusory affidavit testimony is offered. Indeed, the Court is uncertain as to what these documents truly represent and the basis of their authenticity. Are they resolutions? Of what body? Are they part of the *Book of Discipline*? By what authority? While answers to these questions may well be forthcoming at

the trial stage, no answers have been provided here. On the present record these documents appear to be self-serving and, in all events, are unpersuasive.

IV.

Having determined that the plaintiffs are entitled to preliminary injunctive relief, the Court must next decide what form that relief should take. One alternative is to continue the temporary restraining order in effect until this action is finally determined on its merits. The other alternative, which the plaintiffs advocate, is to enter an order that would effectively restore to the plaintiffs unrestricted control of the properties, *pendente lite*.

Because of the Court's preliminary rulings and of the issues still remaining to be determined at final hearing, there are several open questions that concern the governance of the Mother Church, and, consequently, the management of its property and affairs. These questions include the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference. Should those questions be resolved in favor of the Conference, one result may be to empower the defendants to influence in some (as yet undefined) manner the management and disposition of the Mother Church's properties.

Given these uncertainties, the Court is persuaded that a form of interim injunctive relief that would altogether exclude the defendants from access to the Mother Church's properties at this stage is inadvisable. It would risk irreparably prejudicing the defendants' position before the case has been adequately presented and decided. That observation is not intended in any way to suggest my view of the ultimate outcome, but only to strike an appropriate interim balance between the legitimate interests of both sides. That balance, in my view, is best struck

by (i) continuing the temporary restraining order in effect until this action is finally determined on the merits, and (ii) scheduling a final hearing on an expedited basis, consistent with this Court's other commitments. That result will permit both sides of the dispute to have access to the church building until this litigation is resolved, and will minimize the risks inherent in giving either side unfettered control of the properties at this preliminary stage.

Accordingly, the plaintiffs' motion for a preliminary injunction is granted. The temporary restraining order previously entered shall remain in effect until further order of the Court. Counsel shall promptly confer with each other, and then with the Court to schedule expedited discovery and trial.

IT IS SO ORDERED.

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs Below,
Appellees.

No. 96, 1993

APPELLANTS' REPLY BRIEF

Submitted: 16 September 1993

* * *

ARGUMENT

THE DELAWARE AND FEDERAL CONSTITUTIONS REQUIRE JUDGMENT FOR APPELLANT.

* * *

B. Merits

Delaware's Constitution of 1897 begins with a guarantee of religious freedom:

> [N]o power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of reli-

> gious worship, nor a preference given by law to any religious societies, denominations, or modes of worship. [Art. I, §1]

Transferring the real estate to the Mother Church was an impermissible preference of that religious society over the Conference, which is another religious society and a denomination. Ordering Shearin to participate in the Mother Church's affairs was an impermissible interference with her rights of conscience, as she explained in her motion to withdraw [citation omitted], for which explanation she was sanctioned under Ch.Ct.R. 11.

Exhibit E of the Complaint filed 18 April 1991 and verified by Appellees Morris A. Comegys and Sara B. Gardner was a contract for the year beginning June 1990 and ending May 1991, signed by Comegys as President of the Board of Trustees of the Mother AUMP Church, Inc., in which those trus-

tees, "intend[ing] to be legally bound hereby," promised to "be responsible as to all mentioned in the Book of Discipline according to the 1958 AUFCMP Church, Inc., and any/all revisions made to the Book of Discipline, entitled the Duties of the Trustees"; the trustees also promised to hold Pastor Gunther "responsible . . . as to all mentioned in the Book of Discipline according to the 1958 AUFCMP Church, Inc., and any/all revisions made to the Book of Discipline, entitled The Duty of Minsters in Charge."

The Complaint referred to the Book of Discipline at ¶9-¶11, ¶13-¶14, and ¶17-¶19: The 17th edition was in effect from 1958 until 1986, and the 18th edition has been in effect since then. "The full title of that document is The Book of Discipline of the African Union First Colored Methodist Protestant Church and Connection of the

United States of America and the World. . . . [T]hat entire document was placed of record for the purposes of the preliminary injunction motion." [A039, n. 2] It was therefore part of the trial record as a matter of law. Ch.Ct.R. 65(a)(2).

The 17th edition, in effect in 1969 when the original Mother Church building was sold and the one at issue was bought [Complaint, ¶22], provided:

> All Church property and other property belonging to the Connection shall be deeded to the members and Connection, and should the members disband or secede the property shall remain in the possession of the Connection, and that each local Church shall be so incorporated that if the members should disband or secede, the said Church and property shall remain in the Connection. [Art. X, ¶6, pp. 67-68]

The 18th edition, in effect in 1991 when the Mother Church's trustees called and held their secession meeting [Complaint, ¶29 & ¶30] and Appellees filed suit, provided:

ARTICLE XII

The Duties of Trustees

. . . [The Trustees] shall represent the members in all law suits and defend the property before the Courts in the interest of the legal members of the AUFCMP Church and Connection . . .

Restriction of Powers

The local Church Trustees shall not have power to exclude from the pulpit, any Minister who is or dained or licensed according to the Book of Discipline. . . .

The local church Trustees cannot call any meetings except for routine Trustees' duty, which meetings shall be called by them through and by the Pastor of the said Church.

Local Trustees are amenable to the Bishop or Ministers and members of the local Church in which they exercise their office, any of whom may be dismissed when they do not perform their duties in accordance with the ruling of the Bishop and the Conference. [pp. 70-71]

ARTICLE X

The Duties of Ministers in Charge

The Pastor . . . is the chairman of all church meetings and all board meetings . . . . The pastor is the representative of the Presiding Bishop to look after the interest of the Local Church, to assist and direct in putting forth efforts to raise funds for the benefit of the Local Church, and the AUMP Church, Inc.

The Pastor cannot and shall not call any meeting(s) to change the name of, or in any way change the status of, the church in the Conference. . . . [pp. 56-57]

The Discipline also sets forth the AUF-CMP Church's Constitution [pp. 8-10] and specifies the powers of the Quarterly Conferences [Art. V, p. 38], the Annual Conference [Art. VI, p. 42], and the General Conference [Art. IX, p. 56], which constitute the structure common to Methodist denominations in this country:

> The Church is organized on the presbyteral system of church government with each local church or congregation irrevocably connected to the others and each local church being an integral part of the parent body. The internal structure of the Church is hierarchically arranged. The local congregations are governed by Quarterly Conferences within each particular church. These in turn are subject to the administrative oversight of an Annual Conference. Finally, at the summit of the pyramid rests the General Conference, the supreme legislative body of the Church. The basic structure of the Church is prescribed in its Constitution, but the particulars of organization, ritual, and procedure are found in the Discipline.

Trustees of Peninsula Annual Conference v. Spencer, Del.Ch., 183 A.2d 588, 589 (1962).

The presbyteral "is one of the principal systems of church polity known as the Christian Protestant Church, occupying an intermediate position between episcopacy and congregationalism." Trustees of Pencader Presbyterian Church v. Gibson, Del.Supr., 22 A.2d 782, 790 (1941).

The Complaint was filed on behalf of the Mother Church congregation's members [¶5] but, like the intervenors in Peninsula Annual Conference, 183 A.2d at 594, they lacked standing to raise any property interest. "The congregation may secede, but they cannot take with them the church property even if their action is unanimous." Pencader Presbyterian Church, 22 A.2d at 786.

The United States Supreme Court has distinguished between church property disputes as such and internal church disputes that affect church property. Generally, a

church property dispute is one where the church is on one side and someone else, such as an adjoining property owner or an heir of whoever conveyed the property to the church, is on the other side. In an internal church dispute (or "religious dispute"), different factions of the same church are on both sides.

> As to the first category--property disputes "as such"--civil courts have a duty to adjudicate them in neutral terms if at all, without resolving underlying religious issues. . . . But as to the second category--disputes over religious doctrine, administration, or organization--a civil court can discharge its duty in only one way: by accepting the decisions of the proper church authorities "as it finds them," [Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976)] whatever might be the "incidental effect" on property or other secular matters. [Id. at 720] In other words, Serbian Orthodox Diocese settled a question left open by the Court's prior decisions: whatever room the first amendment might leave for independent civil resolution of secular but church-related disputes through neutral principles of law, it leaves no room whatever for independent civil adjudication of "questions * * * at the core of eccle-

> siastical concern." [Id. at 717]
> It is noteworthy that the Court in Serbian Orthodox Diocese included, in its enumeration of questions so quintessentially religious as to oust civil jurisdiction altogether, not only matters of religious doctrine and hierarchical composition but also "questions of church discipline." [Id.]

L. Tribe, American Constitutional Law §14-11 at 1241 (2d ed. 1988).

This dispute is over church administration: Under the heading "The Present Dispute" the Complaint says [¶27], "The defendant [Presiding Prelate Delbert L. Jackson] believes he can govern The Church as a hierarchical organization." Appellees withdrew from the Church because Bishop Jackson forbade a certain funeral at the Mother Church [Complaint, ¶28-¶30]. The relief prayed included a declaratory judgment that by his enumerated acts, as the Bishop of the Conference, Jackson violated Appellees rights [Complaint, p. 11, ¶c].

This is clearly a religious dispute

that incidentally affects real property, so the First Amendment absolutely and unequivocally requires any civil court to defer to the General Conference's decisions, including that to transfer title from the local churches to the Conference via the 6 April 1991 quitclaims.

* * *